

## REMARKS

In the Office Action, the Examiner objected to claims 1-5 and 11-13 under 35 U.S.C. § 103 as being unpatentable over United States Patent 6,006,126, issued to Cosman (“Cosman”) in view of United States Patent 6,580,938, issued to Acker (“Acker”).

Applicant has amended claims 1-2 and 11. Applicant does not surrender any equivalents. Applicant has added new claims 18-22. Applicant has not canceled any claim. Accordingly, claims 1-5, 11-13 and 18-22 are currently pending in this application.

### **I. Rejection of claim 1-5 under 35 U.S.C. § 103**

In the Office Action, the Examiner objected to claims 1-5 under 35 U.S.C. § 103 as being unpatentable over Cosman in view of Acker. Claims 2-5 depend directly or indirectly on claim 1. Claim 1 recites a method for guiding a medical instrument to a target site within a patient. The method captures at least one intraoperative ultrasonic image from the patient. The method identifies a spatial feature indication of a patient target site on the intraoperative ultrasonic image. The method determines coordinates of the patient target site spatial feature in a reference coordinate system. The reference coordinate system is not defined in terms of the ultrasonic image. The method determines a position of the instrument in the reference coordinate system. The method displays a view from the perspective of the instrument in the reference coordinate system. The method displays on the displayed view a set of indicia identifying the position of the target site with respect to the instrument, where the set of indicia is not a geometric representation of the target.

Applicants respectfully submit that the hindsight, piece meal combination of Cosman and Acker does not disclose, teach, or suggest the method of claim 1. Cosman describes a method that uses preoperative images from a scanner (e.g., CT, MRI). *See* Cosman, column 4, lines 50-60. In other words, Cosman describes the use of images from a scanner that were taken before

an operation on a patient. These preoperative images are then used in conjunction with images from regular video cameras to assist a surgeon in the operation of the patient. *See Id.* In contrast, claim 1 recites a method that captures at least one intraoperative ultrasonic image from the patient. Acker also does not disclose, teach, or suggest a method that captures an intraoperative ultrasonic image.

In addition, Acker is not combinable with Cosman as Acker actually teaches away from the method of Cosman. As mentioned above, Cosman describes a method that uses pre-operative images. In contrast, Acker avoids the use of images from scanners (e.g., CT, MRI) since its method “provide[s] a solution to the motion artifact problem which does not require acquisition of multiple images for massive manipulation of the image data to distort an image.” *See* column 4, lines 5-11. Accordingly, the Cosman and Acker are not combinable references.

Thus, the cited references do not render claim 1 unpatentable under 35 U.S.C. § 103. As claims 2-5 are dependent directly or indirectly on claim 1, Applicants respectfully submit that claims 2-5 are patentable over the cited references for at least the reasons that were discussed above in relation to claim 1. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of claims 1-5.

## **II. Rejection of claim 11-13 under 35 U.S.C. § 103**

In the Office Action, the Examiner objected to claims 11-13 under 35 U.S.C. 103 as being unpatentable over Cosman in view of Acker. Claims 12-13 depend directly on claim 11. Claim 11 recites a method for facilitating a medical procedure involving navigation of a medical instrument towards a target site in a patient. The method captures at least one intraoperative ultrasonic image from the patient. The method receives at least one location on the ultrasonic image as the location of the target site. From the received location, the method calculates the location of the target site with respect to the orientation of the instrument. The method displays

a view of the patient from the perspective of the instrument. The method displays in real time a set of indicia that identifies the location of the target site in the displayed view, in order to facilitate the navigation of the medical instrument towards the patient target site.

Applicants respectfully submit that the hindsight, piece meal combination of Cosman and Acker does not disclose, teach, or suggest the method of claim 11. Cosman describes a method that uses preoperative images from a scanner (e.g., CT, MRI). *See* Cosman, column 4, lines 50-60. In other words, Cosman describes the use of images from a scanner that were taken before an operation on a patient. These preoperative images are then used in conjunction with images from regular video cameras to assist a surgeon in the operation of the patient. *See Id.* In contrast, claim 11 recites a method that captures at least one intraoperative ultrasonic image from the patient. Acker also does not disclose, teach, or suggest a method that captures an intraoperative ultrasonic image.

In addition, Acker is not combinable with Cosman as Acker actually teaches away from the method of Cosman. As mentioned above, Cosman describes a method that uses pre-operative images. In contrast, Acker avoids the use of images from scanners (e.g., CT, MRI) since its method “provide[s] a solution to the motion artifact problem which does not require acquisition of multiple images for massive manipulation of the image data to distort an image.” *See* column 4, lines 5-11. Accordingly, the Cosman and Acker are not combinable references.

Thus, the cited references do not render claim 11 unpatentable under 35 U.S.C. § 103. As claims 12-13 are dependent directly on claim 11, Applicants respectfully submit that claims 12-13 are patentable over the cited references for at least the reasons that were discussed above in relation to claim 11. In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the § 103 rejections of claims 11-13.

### **III. New Claims 18-22**

In this Amendment, Applicants have added claims 18-22. Applicants respectfully submit that claims 18-22 are fully supported by the specification and are patentable over Cosman and Acker. Accordingly, Applicants respectfully submit that claims 18-22 are in condition for allowance.

## CONCLUSION

It is submitted that all the pending claims, namely claims 1-5, 11-13 and 18-22 are in condition for allowance. Allowance is earnestly solicited at the earliest possible date.

Applicant petitions the Commissioner for Patents under 37 C.F.R. § 1.136(a) to extend the time for submitting the response to an Office Action dated 01/24/2007. This extension will extend the time the response is due from 04/24/2007 to 06/25/2007 (6/24/2007 being a Sunday).

Applicant believes that no additional fee is required for the submission of this Amendment and response. However, in the unlikely event that the Commissioner determines that additional fee, extension and/or other relief is required, Applicant petitions for any required relief. Moreover, Applicant authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-3804** referencing STAN.P0009.

Respectfully submitted,

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